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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

CANYON PARK BUSINESS CENTER
OWNERS' ASSOCIATION

Plaintiff,

v.

PETE BUTTIGIEG in his official capacity as
Secretary of Transportation; UNITED
STATES DEPARTMENT OF
TRANSPORTATION; STEPHANIE
POLLACK in her official capacity as the
Deputy Administrator of the Federal
Highway Administration; MELINDA
ROBERSON in her official capacity as the
Division Administrator of the Federal
Highway Administration, Washington
Division; THE FEDERAL HIGHWAY
ADMINISTRATION; ROGER MILLAR in
his official capacity as Secretary of
Washington State Department of
Transportation; and WASHINGTON
DEPARTMENT OF TRANSPORTATION,

Defendants.

Case No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. JURISDICTION AND VENUE

1 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
2 question) and the Administrative Procedure Act, 5 U.S.C. §§ 701–06 (“APA”). An actual
3 controversy exists between the parties to this lawsuit under 28 U.S.C. § 2201(a), and this Court
4 may grant declaratory relief, injunctive relief, and other relief pursuant to 28 U.S.C. §§ 2201–02
5 and 5 U.S.C. §§ 705–06.

6 2. The challenged agency actions of Defendants are subject to this Court’s review
7 pursuant to the APA, 5 U.S.C. § 702. The APA allows this Court to hold unlawful and set aside
8 agency action that is arbitrary and capricious, an abuse of discretion, or not otherwise in
9 accordance with law, 5 U.S.C. § 706(2)(A); that is in excess of the statutory jurisdiction, authority
10 or limitation, 5 U.S.C. § 706(2)(C); and that is undertaken without observance of procedures
11 required by law, 5 U.S.C. § 706(2)(D).

12 3. CPBCOA challenges final agency actions as defined by the APA, 5 U.S.C. § 704.

13 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), because a
14 substantial part of the events giving rise to the claims occurred in this District.

15 5. The Seattle Division in the Western District of Washington is the proper forum for
16 this lawsuit pursuant to Local Civ. R. 3(e) because the claims arose in King and Snohomish
17 Counties, Washington.

II. PARTIES

18 6. Canyon Park Business Center Owners’ Association (“CPBCOA”) realleges as if
19 fully set forth here, each and every allegation contained in the preceding paragraphs.

20 7. Plaintiff CPBCOA is a Washington State non-profit corporation located at 18912
21 North Creek Parkway Suite 209, Bothell, WA, 98011, comprised of owners of the properties
22 located in the Canyon Park Business Center (the “Park”) in Bothell, WA. The Park is an
23 approximately 400-acre business and industrial park established in the 1980s. CPBCOA is suing
24 on behalf of itself representing the interests of its members. Members of the CPBCOA and their
25
26

1 tenants include, but are not limited to, biotech, technology, manufacturing, logistics, and service
2 industries, as well as residential developers and owners.

3 8. The United States Department of Transportation (“USDOT”), the Federal Highway
4 Administration (“FHWA”), and the Washington State Department of Transportation (“WSDOT”)
5 (collectively, “Defendants”) jointly conducted environmental review of the Interstate 405 (“I-
6 405”), State Route (“SR”) 522 Vicinity to SR 527 Express Toll Lanes Improvement Project (the
7 “Project”) in Washington State. On information and belief, WSDOT served as the applicant for
8 the Project. WSDOT and FHWA jointly prepared, reviewed, and approved the Environmental
9 Assessment (“EA”) and issued the Finding of No Significant Impact (“FONSI”) for the Project.

10 9. Defendant USDOT is the executive department of the federal government
11 responsible for approval of highway projects.

12 10. Defendant Pete Buttigieg is the United States Secretary of Transportation. He is
13 sued in his official capacity only.

14 11. Defendant FHWA is a federal agency within the USDOT that supports state and
15 local governments in the design, construction, and maintenance of the United States highway
16 system and ensures that America’s roads and highways are both safe and technologically sound.
17 FHWA was the lead federal agency for the Project’s environmental review process under the
18 National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.* On July 29, 2021,
19 FHWA, through its Washington Division, and WSDOT issued a FONSI for the Project and
20 published its NEPA approvals on August 2, 2021, in the Federal Register.

21 12. Defendant Stephanie Pollack is the Deputy Administrator of the FHWA. As of the
22 date of this filing, the position of Administrator of the FHWA is vacant. She is sued in her official
23 capacity only.

24 13. Defendant Melinda Roberson is the acting Division Administrator of the FHWA
25 Washington Division, which is located at 711 S. Capitol Way, Suite 501 Olympia, WA, 98501.
26 She is sued in her official capacity only.

1 14. Defendant WSDOT is a Washington state agency that constructs, maintains, and
2 regulates the use of transportation infrastructure in Washington state. WSDOT's primary
3 administrative office is located at 310 Maple Park, Olympia, WA, 98501.

4 15. Defendant Roger Millar is the Secretary of the WSDOT. He is sued in his official
5 capacity only.

6 16. The Project is a joint state-federal project for which WSDOT was integrally
7 involved in the planning and created the environmental documents pursuant to NEPA.

8 17. The Project is a major federal action because the FHWA has approved construction
9 and management activities (the Project) in a defined geographic area (in the City), and, on
10 information and belief, has provided federal assistance for the Project.

11 18. WSDOT is a necessary party in this litigation.

12 19. State defendants can be subject to NEPA if: (1) there are state and federal projects
13 that are sufficiently interrelated to constitute a single federal action for NEPA purposes; (2) a state
14 defendant has entered into a partnership or joint venture with the federal government whereby the
15 federal government provides goods, services, or financing; or (3) a proposed action cannot
16 proceed without the prior approval by a federal agency. On information and belief, WSDOT
17 satisfies these requirements, including but not limited to, receipt of federal funding for the Project.

18 20. FHWA and WSDOT have both conducted environmental review of the Project and
19 jointly developed and published both the EA and FONSI.

20 21. The Project cannot proceed without FHWA's approval.

21 22. To the extent the Project constitutes a state project and a federal project, those
22 projects are sufficiently interrelated to constitute a single federal action.

23 23. Defendants have harmed CPBCOA's interests in participating in a legally sound
24 environmental review process that adequately considers the impacts of the Project. Defendants
25 failed to take a "hard look" at the environmental impacts of approving the Project. Defendants
26 relied on flawed and insufficient environmental analysis in violation of NEPA.

1 vehicles connecting between SR 527 and I-405 via the DAR will be directed through the Park on
2 17th Avenue SE and 220th Street SE as an alternative route to the I-405/SR 527 interchange.

3 29. According to the EA, the purpose of the Project is to: (1) provide a reliable trip for
4 I-405 users using the ETLs; (2) provide new direct access for users of the existing ETLs, including
5 bus rapid transit; (3) increase vehicle capacity and person throughput; and (4) improve reliability
6 for transit riders.

7 30. On July 2, 2020, Defendants published the EA for the Project, which analyzed
8 existing conditions and only a “Build” versus “No Build” scenario for the Project beginning in
9 2025 with a horizon year of 2045. The EA’s SR 527 interchange analysis concluded that the DAR
10 and the SR 527 interchange areas would experience higher vehicle volumes with the Build
11 scenario as compared to the No Build scenario, and specifically concluded that many intersections
12 within the Park would experience degraded Levels of Service (“LOS”).

13 31. LOS refers to the degree of congestion measured in average delay per vehicle. LOS
14 A is the best operating condition, with motorists experiencing minimal delay. LOS F is the worst
15 condition, with motorists experiencing delays at traffic signals of more than one minute.

16 32. The traffic modeling used by Defendants in the EA was fundamentally flawed.
17 Defendants underestimated traffic impacts in and to the Park. Defendants misidentified Project
18 related traffic impacts and failed to adequately analyze or identify appropriate mitigation for those
19 impacts. Defendants’ failure to identify, analyze or mitigate severe traffic impacts was a critical
20 error in Defendants’ environmental analysis.

21 33. The EA’s roadway and intersection analysis concluded that several intersections
22 within the Park are projected to operate at LOS E or F under both the Build and No Build scenarios
23 both in 2025 and 2045. With the added severity of unanalyzed and unmitigated Project related
24 traffic impacts, these intersections will be even further degraded to a “worse” LOS F than
25 previously identified and the roadways within the Park will experience substantial queuing,
26 blocking abutting properties’ access to the road network and backing up traffic to the ETL.

1 34. Defendants applied an inflated regional aggregate growth rate as a background
2 assumption when measuring growth within the Park under the No Build scenario in order to
3 minimize the relative effect of the Project on traffic within the Park.

4 35. Defendants failed to consider the significant increase in density allowed and
5 planned for in the Park by the City in its Canyon Park Subarea Plan, adopted on January 1, 2021.
6 As a result, the volumes utilized to forecast future conditions underestimated impacts on the LOS
7 and queuing levels in the Park.

8 36. The additional traffic and corresponding congestion generated by vehicles utilizing
9 the DAR (as an alternative to the SR 527 interchange) into and out of the Park will block traffic
10 in several exiting driveways along 17th Avenue SE. Such impacts were not analyzed in the EA.

11 37. Defendants relied on traffic models that do not adequately capture and report the
12 Project's traffic impacts, particularly on roadways within the Park. Defendants' models
13 incorrectly found that traffic impacts generally operate at acceptable levels of service and/or
14 would improve under the Build scenario. In some cases, the Defendants' models failed to count
15 all vehicles that would access the roadway and consequently underreported congestion levels.
16 These errors resulted in a failure to identify significant adverse environmental impacts, failure to
17 properly analyze those impacts, and failure to identify adequate mitigation for those impacts.

18 38. The Project includes additional turn lanes along 17th Avenue SE and the 220th
19 Street SE corridor. These improvements are insufficient to accommodate the increased traffic
20 created by the Project.

21 39. Additionally, the EA projects that the 17th Avenue SE and 220th Street SE
22 corridors will be operating above capacity with the Project, causing a significant diversion of cut
23 through trips throughout the Park.

24 40. Section 5.1.1 of the FONSI references the limited measures WSDOT has proposed
25 to avoid, minimize, or mitigate transportation effects of the Project within the Park. The traffic
26 measures in the Park required as part of the FONSI are limited to installing wayfinding signage

1 directing traffic from the DAR to SR 527. The FONSI also refers to intersection improvements
 2 at 20th Ave SE and 220th Street SE but asserts that these improvements are not necessary to
 3 mitigate Project effects.

4 41. The FONSI for the Project relied upon erroneous traffic analysis that resulted in
 5 underestimation of traffic impacts in the Park and/or failure to identify traffic impacts. As a result,
 6 the limited mitigation measures identified in the FONSI are inadequate to address the Project's
 7 significant adverse traffic impacts in the Park.

8 42. CPBCOA raised concerns about inadequate traffic analysis for the Project in
 9 comment letters and other communications pertaining to both the EA and FONSI. The Defendants
 10 failed to adequately address these concerns.

11 43. The Project will have significant adverse impacts on transportation and traffic
 12 operations in the area around the I-405 and SR 527 interchange, including in the Park, its road
 13 network, and its operations.

14 44. Defendants' decision to issue a FONSI and approve the Project has harmed and
 15 continues to harm CPBCOA and its members in numerous ways. The Project will result in a
 16 significant increase in the number of vehicles in the Park, adversely affect property owners,
 17 tenants and visitors/customers' access to the Park, and overall, dramatically increase the traffic in
 18 the Park, including increased congestion and vehicle queueing.

19 45. Defendants have harmed CPBCOA's interests in participating in a legally sound
 20 environmental review process that adequately considers the Project's impacts. Defendants failed
 21 to take the requisite "hard look" at the Project's environmental impacts and relied on flawed and
 22 insufficient environmental analysis in violation of NEPA.

23 **IV. FIRST CAUSE OF ACTION: Violation of NEPA, 42 U.S.C. §§ 4321 *et seq.* and**
 24 **APA, 5 U.S.C. §§ 701–06 (Against All Defendants) - Inadequate Analysis**

25 46. CPBCOA realleges as if fully set forth here, each and every allegation contained in
 26 the preceding paragraphs.

1 47. NEPA directs all federal agencies to assess the environmental impacts of proposed
2 federal actions that significantly affect the quality of the human environment. 42 U.S.C. §
3 4332(2)(C). NEPA's disclosure goals are two-fold: (1) to ensure that the agency has carefully and
4 fully contemplated the environmental effects of its action; and (2) to ensure that the public is
5 informed and involved in decisions that affect the quality of the human environment. 40 C.F.R. §
6 1500.1.

7 48. The Council on Environmental Quality ("CEQ") promulgated uniform regulations
8 to implement NEPA that are binding on all federal agencies. 40 C.F.R. §§ 1500, *et seq.*

9 49. NEPA requires federal agencies to prepare an EIS for "major federal actions
10 significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

11 50. When it is not clear whether an action requires the preparation of an EIS, CEQ's
12 regulations direct agencies to determine whether the action is categorically excluded or prepare
13 an EA to determine whether an EIS is required. 40 C.F.R. § 1501.5(a). An EA is a "concise public
14 document," 40 CFR § 1508.1, that must "briefly provide sufficient evidence and analysis for
15 determining whether to prepare an environmental impact statement or a finding of no significant
16 impact." 40 C.F.R. § 1501.5(c).

17 51. If an agency determines that an action may have a significant environmental impact,
18 the agency must prepare an EIS. 40 C.F.R. § 1501.3. If the agency determines that the impacts
19 will not be significant, the agency must prepare a FONSI. 40 C.F.R. § 1501.6.

20 52. If the FHWA utilizes documents prepared by a state department of transportation,
21 the FHWA must furnish guidance, participate in the preparation, and independently evaluate the
22 document. 23 C.F.R. § 771.109(c)(5).

23 53. The APA governs the procedural requirements for agency decision making and
24 provides the standard of review for a federal agency's compliance with NEPA

25 54. The APA provides a right to judicial review of final agency actions. 5 U.S.C. § 702.
26

55. The APA mandates that a court hold unlawful and set aside such actions, findings, and conclusions when they are: (a) arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2)(A); (b) in excess of statutory jurisdiction, authority or limitation, 5 U.S.C. § 706(2)(C); or (c) without observance of procedures required by law, 5 U.S.C. § 706(2)(D).

56. The Project, its federal approval, and associated funding constitute a major federal action.

57. The issuance of a FONSI constitutes final agency action.

58. In the EA, Defendants utilized flawed assumptions and inadequate transportation modeling and analysis, including modeling errors pertaining to traffic impacts within the Park. As a result, Defendants did not adequately identify, disclose, and study the effects and impacts, including cumulative impacts, of the Project on the natural and human environment.

59. Defendants relied on the EA in issuing the FONSI.

60. These flawed assumptions and inadequate transportation analysis, as detailed in the EA, resulted in the Defendants wrongly issuing a FONSI.

61. Defendants' failure to adequately identify, disclose, and study the effects and impacts of the Project violates NEPA, is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with the law within the meaning of the APA, 5 U.S.C. § 706(2).

V. SECOND CAUSE OF ACTION: Violation of NEPA, 42 U.S.C. §§ 4321 *et seq.* and APA, 5 U.S.C. §§ 701–06 (Against All Defendants) - Failure Mitigate Impacts

62. CPBCOA realleges as if fully set forth here, each and every allegation contained in the preceding paragraphs.

63. A FONSI is required to state the authority for any mitigation and appropriate monitoring or enforcement for such mitigation. 40 C.F.R. § 1501.6(c). If an agency issues a FONSI based on mitigation, it shall state “any enforceable mitigation requirements or commitments that will be undertaken to avoid significant impacts.” *Id.*

64. Defendants relied on inadequate and flawed methodology and assumptions pertaining to the Project's traffic impacts when developing the EA. As a result, the EA failed to adequately identify impacts of the Project.

65. Because the EA did not identify the impacts, the proposed mitigation measures in the EA and FONSI are inappropriate and ineffective.

66. Inadequate mitigation measures were the basis for the FONSI. The FONSI is, therefore, flawed and inadequate.

67. Defendants' reliance on inadequate mitigation measures in the EA as the basis for a FONSI is a violation of NEPA, is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with the law within the meaning of the APA, 5 U.S.C. § 706(2).

VI. THIRD CAUSE OF ACTION: VIOLATION OF NEPA, 42 U.S.C. §§ 4321 *et seq.* and APA, 5 U.S.C. §§ 701–06 (Against All Defendants) - Inadequate Alternatives Analysis/Impermissibly Narrow Purpose and Need

68. CPBCOA realleges as if fully set forth here, each and every allegation contained in the preceding paragraphs.

69. A statement of purpose and need must "briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives included in the proposed action" 40 C.F.R. § 1502.13.

70. The statement of purpose and need sets the parameters for the alternatives that must be considered in the environmental review.

71. Whether the agency prepares an EA or an EIS, or both, NEPA requires federal agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E).

72. The only alternatives analyzed in the EA were a Build and No Build scenarios.

73. The Defendants narrowly defined the purpose and need to limit the range of alternatives evaluated in the EA.

1 74. In any case, the EA failed to evaluate a reasonable range of alternatives.

2 75. Defendants' decision to narrowly tailor the purpose and need and failure to
3 adequately consider a reasonable range of alternatives are violations of NEPA, are arbitrary and
4 capricious, are abuses of discretion and otherwise not in accordance with the law within the
5 meaning of the APA, 5 U.S.C. § 706(2).

6 **VII. FOURTH CAUSE OF ACTION Violation of NEPA, 42 U.S.C. §§ 4321 *et seq.* and**
7 **APA, 5 U.S.C. §§ 701–06 (Against All Defendants) - Failure to Prepare an**
8 **Environmental Impact Statement**

9 76. CPBCOA realleges as if fully set forth here, each and every allegation contained in
10 the preceding paragraphs.

11 77. An EIS is a “detailed statement” that must describe: (1) the “environmental impact
12 of the proposed action;” (2) any “adverse environmental effects which cannot be avoided should
13 the proposal be implemented;” (3) alternatives to the proposed action; (4) “the relationship
14 between local short term uses of man’s environment and the maintenance and enhancement of
15 long-term productivity;” and (5) any “irreversible or irretrievable commitment of resources which
16 would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332(2)(C)(i)–
17 (v).

18 78. If there are substantial questions whether a proposed action may significantly
19 impact the environment, an EIS must be prepared.

20 79. Defendants relied on inadequate and flawed methodology and assumptions
21 pertaining to the Project’s traffic impacts when developing the EA. As a result, the EA failed to
22 adequately identify impacts of the Project.

23 80. Because the EA did not identify the impacts, the mitigation measures identified in
24 the EA FONSI are inadequate to offset the adverse effects of the Project.

25 81. These inadequate mitigation measures were the basis for the FONSI. The FONSI
26 is, therefore, flawed and inadequate.

82. Had Defendants conducted an adequate analysis, including, using appropriate methodologies and assumptions, Defendants would have concluded that the Project may significantly impact the human environment or that there are substantial questions about whether the Project may significantly impact the environment. To avoid preparing an EIS, Defendants needed to provide sufficient mitigation to address those impacts. Accordingly, Defendants were required to issue an EIS and/or a EA/FONSI with adequate mitigation measures.

83. Defendants' decision to forgo preparation of an EIS or a supplemental EA/FONSI with appropriate mitigation measures is a violation of NEPA, is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law within the meaning of the APA, 5 U.S.C. § 706(2).

**VIII. FIFTH CAUSE OF ACTION: Permanent Injunction APA, 5 U.S.C. §§ 701–06
(Against All Defendants)**

84. CPBCOA realleges as if fully set forth here, each and every allegation contained in the preceding paragraphs.

85. Because the Project will impact CPBCOA's property rights, interests, and access and use of the roads, CPBCOA is entitled to an injunction immediately and forever enjoining Defendants from taking any further action on the Project until such time as Defendants have complied with its duties under NEPA and produced lawful NEPA documents.

**IX. SIXTH CAUSE OF ACTION: Declaratory Judgment that Defendants Violated NEPA, 42 U.S.C. §§ 4321 *et seq.*, 28 U.S.C. § 2201 and APA, 5 U.S.C. §§ 701–06
(Against All Defendants)**

86. CPBCOA realleges as if fully set forth here, each and every allegation contained in the preceding paragraphs.

87. Pursuant to 28 U.S.C. § 2201(a), in a case of actual controversy within its jurisdiction, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interest party seeking such declaration, whether or not further relief is or could be sought.

88. An actual controversy of sufficient immediacy exists between the Parties as to whether Defendants complied with their statutory obligations under NEPA. This Court has the authority to resolve this case or controversy pursuant to 28 U.S.C. § 2201(a).

X. PRAYER FOR RELIEF

WHEREFORE, CPBCOA requests cumulatively, and in the alternative that the Court grant the following relief:

1. Find and declare that Defendants' approval of the FONSI violates NEPA;
2. Order Defendants to comply with its obligations under NEPA and prepare an EIS that meets the statutory and regulatory requirements of NEPA and/or issue a revised FONSI, based on adequate alternatives and analysis, including mitigation measures sufficient to offset the significant transportation impacts of the Project;
3. Enjoin Defendants from taking any further action on the Project until such time as Defendants have complied with its duties under NEPA and produced lawful NEPA documents as ordered by this Court;
4. Award attorney fees and costs as provided under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
5. Grant CPBCOA such further and additional relief as the Court may deem just and proper.

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1 DATED: December 20, 2021.

Respectfully submitted,

2 VAN NESS FELDMAN LLP

3 /s/ Dale N. Johnson

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